

REMARKS

I. Status of Claims

Claims 1-13 are pending in this application. Claim 1 has been amended.

Applicants wish to thank the Examiner for the courtesy of a telephonic interview on October 9, 2003. Applicants have amended claim 1 to delete "mistletoe extract" and to recite, "a composition comprising **an effective amount of** at least one plant extract..." as suggested by the Examiner. Accordingly, it is believed that the claims are now in condition for allowance.

II. Claim Rejections under 35 U.S.C. § 102

A rejection under § 102 is only proper when the claimed subject matter, in this case a method of protecting keratinous fiber from extrinsic damage, is identically described or disclosed in the prior art. *In re Arkley*, 455 F.2d 586, 587 (CCPA 1972); see also M.P.E.P. § 2131.

Konishi

Claims 1 and 10-12 continue to be rejected under 35 U.S.C. § 102(b) as being anticipated by JP 62099319 ("*Konishi*") for the reasons set forth on pp. 3-5 of the Final Office Action. Applicants respectfully traverse this rejection.

As stated in the remarks of record, Applicants respectfully submit that *Konishi*, directed to a hair tonic comprising an extract of mistletoe, does not anticipate the present claims. Nonetheless, to expedite prosecution, Applicants have amended sole independent claim 1 to delete "mistletoe extract."

Because *Konishi* does not teach applying a composition comprising an effective amount of at least one plant extract chosen from wheat germ extract and willowherb

extract, *Konishi* does not explicitly or impliedly anticipate amended claim 1.

Accordingly, Applicants respectfully request withdrawal of this rejection.

Lekim

Claims 1 and 10-12 stand rejected under 35 U.S.C. § 102(b) as being anticipated by DE 3901286 ("*Lekim*") for the reasons set forth on pp. 3-5 of the Final Office Action.

Applicants respectfully traverse this rejection.

As stated in the remarks of record, Applicants respectfully submit that *Lekim* does not anticipate the present claims as it is directed to a hair tonic formulation for promoting "regeneration of hair on the head" comprising an alcoholic extract of mistletoe. Nonetheless, to expedite prosecution, Applicants have amended sole independent claim 1 to delete "mistletoe extract."

Applicants respectfully submit that *Lekim* does not explicitly or impliedly anticipate amended claim 1. Accordingly, Applicants respectfully request withdrawal of this rejection.

III. Claim Rejections under 35 U.S.C. § 103

In order to establish a *prima facie* case of obviousness, the Examiner must demonstrate that there is some suggestion or motivation, either in the cited references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify a reference or combine reference teachings. See M.P.E.P. § 2143.

Konishi

Claims 1 and 10-12 stand rejected under 35 U.S.C. § 103(a) as being obvious over *Konishi* for the reasons set forth on pp. 3-5 of the Final Office Action. Applicants respectfully traverse this rejection.

Applicants respectfully submit that *Konishi*, which teaches the use of mistletoe extract, does not teach or suggest applying to a keratinous fiber a composition comprising an effective amount of at least one plant extract chosen from wheat germ extract and willowherb extract, as recited in amended claim 1.

Accordingly, Applicants respectfully request withdrawal of this rejection.

Lekim

Claims 1 and 10-12 stand rejected under 35 U.S.C. § 103(a) as being obvious over *Lekim* for the reasons set forth on pp. 11-12 of the present Office Action. Applicants respectfully traverse this rejection.

Applicants respectfully submit that *Lekim*, which teaches the use of an alcoholic extract of mistletoe, does not teach or suggest applying to a keratinous fiber a composition comprising an effective amount of at least one plant extract chosen from wheat germ extract and willowherb extract, as recited in amended claim 1.

Accordingly, Applicants respectfully request withdrawal of this rejection.

Konishi and Lekim in view of Pineau

Claims 1-8 and 10-13 are rejected under 35 U.S.C. § 103 (a) as being unpatentable over *Konishi* and *Lekim* in view of U.S. Patent No. 6,296,856 ("*Pineau et al.*") for the reasons set forth on pages 5-7 of the present Office Action. Applicants respectfully traverse this rejection.

As discussed above, neither *Konishi* nor *Lekim* teach or suggest applying to a keratinous fiber a composition comprising an effective amount of at least one plant extract chosen from wheat germ extract and willowherb extract, as recited in amended

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claim 1. *Pineau* does not remedy this deficiency and was cited for teaching the use of sugars.

Applicants respectfully submit that *Konishi*, *Lekim*, and *Pineau*, either alone or in combination, fail to teach the invention recited in amended claim 1. Accordingly, Applicants respectfully request withdrawal of this rejection.

IV. Provisional Double Patenting Rejection

Claims 1-13 remain provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-13 of copending Application No. 09/527,599 for the reasons set forth on pp. 7-8 of the Final Office Action. Applicants respectfully traverse this rejection, but, at this time, respectfully request that this rejection be held in abeyance until allowable subject matter is indicated. At that time, Applicants will consider whether or not to file a Terminal Disclaimer.

V. Conclusion

Applicant respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims.

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Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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